



## 12/31/08 has come and gone.....

We know it's hard to believe, but once again another year is behind us! That is for our plan sponsors who have provided their information to complete their year-end valuation reporting.

If you have not provided the information (*and you know who you are*) that we've requested to prepare your year-end work yet, please make sure you provide it as soon as possible. We have contacted everyone who is still missing data with what is required. Remember, we work on a first in first out basis, so don't wait too long to respond. We want to be certain we have enough time to prepare your valuation reporting and 5500 before the filing deadline of July 31<sup>st</sup>! (*This pertains to December year-ends only*).

If we have completed the year-end reporting for your plan, you have already received or will soon be receiving the 2008 Form 5500 package from us. We will provide instructions for signing and returning the 5500 to us to file, on your behalf, before the filing deadline!

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MVP will be closed Friday, July 3<sup>rd</sup> in observance of Independence Day and Monday, September 7<sup>th</sup> in observance of Labor Day.



## Required Minimum Distribution Changes for 2009

Due to the economic downturn that has resulted in significant reductions in the value of retirement accounts, the suspension of the 2009 Required Minimum Distributions (RMDs) from qualified defined contribution plans and individual retirement accounts was passed by Congress under the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). The IRS has issued Notice 2009-9 to provide the following guidance on the RMD waiver:

- Any 2009 distribution that would be considered a RMD will not be treated as a RMD. The distribution will be eligible for rollover within 60 days of receipt of the distribution to any qualified retirement vehicle.
- Any first year RMD applicable to 2008 that could be delayed until April 1, 2009 is still required to be withdrawn by April 1, 2009. The suspension is only applicable to 2009 RMDs.
- The waiver only applies for 2009; the next RMD year is 2010. Note that WRERA does not change the required beginning date. If you turn 70 ½ during 2009, you have until December 31, 2010 to take your 2010 RMD.

Note: Employer-sponsored retirement plans will need to be amended for the RMD waiver by the last day of the plan's 2011 plan year. If you are using a plan document sponsored by MVP, we will amend your plan by the required amendment date. If you are not using a MVP plan document, please contact your document provider to prepare the required amendment for your plan or you may contract MVP to map your current plan document on the MVP plan document. Please contact us if you are interested in using the MVP document.

## EGTRRA Restatement – What is the status of your plan?

By now, many of our clients have received a Plan Document Restatement Package with updated language for EGTRRA (The Economic Growth Tax Relief and Reconciliation Act of 2001) and various other interim amendments. The restatements are required by law to be completed by April of 2010 at the latest but MVP is committed to completing all restatements by the end of 2009.

### What it is....

The plan document restatements are required for all qualified retirement plans utilizing a prototype or volume submitter plan document. The restatements are required by law to be completed by April of 2010 at the latest but MVP is committed to completing all restatements by the end of 2009.

The restated document you have or will receive this year incorporates the EGTRRA amendment of 2001, the Required Minimum Distribution amendment of 2003, the Final 401(k) and 401(m) regulations of 2006, the auto rollover amendment of 2005 and the optional Roth 401k amendment. In addition, your plan will be amended to include the first two snap on amendments in the current six year cycle for the updates to Internal Revenue Code Section 415 and the Pension Protection Act of 2007.

### What you need to do with it...

Please take the time to read the instructions attached to the plan document materials you receive. It is imperative that you sign and return copies of all signature pages to our office as soon as practicable after receipt of the materials. In order for your plan to remain qualified, all plan documents must be signed and dated in a timely manner.

Depending on the changes incorporated into your amendment you may need to sign and date the amendments before a certain date to avoid any potential benefit cutbacks. You will also need to provide a copy of the restated Summary Plan Description (SPD) to all eligible plan participants and beneficiaries of any deceased participants. The SPD is required to be provided to the participants within 210 days after the end of the plan year in which the amendment or restatement is effective. Additionally, you must provide a copy of the SPD to all newly eligible plan participants within 90 days of their enrollment into the plan.

If your plan is currently using a provider other than MVP for your Plan Document materials it is imperative that you forward a copy of your EGTRRA restated plan document to our office as soon as you receive it. We cannot operate your plan correctly without the most recent plan document available.

If you have any questions regarding your plan document or your restatement package, please contact Tanya Keister at 919-465-2220 x 112 or email her at tanya@mvpplanadmin.com.





## MVP SPOTLIGHT

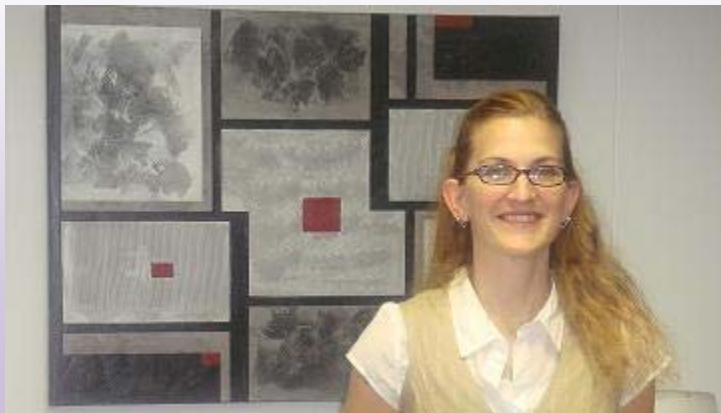
**Keeva Cook**, one of our Plan Administrators, has an extensive background in the retirement plans industry including trading, compliance, and record-keeping. Besides handling “A to Z” administration for very satisfied plan sponsors, she also manages MVP’s relationship with some of the nation’s leading investment providers. With the free time she *does* have, Keeva enjoys being with her family, especially when it’s at the beach!



**Brenda Hess**, MVP’s Firm Administrator, is responsible for all operational areas of our firm including Human Resources, IT, procurements, finance, scheduling, and anything else we can give her! When Brenda joined us in 2005, she punched in to work and has never been able to punch out! She has a banking background and enjoys time with her family.



**Faith McGinnis**, joined MVP earlier this year and provides support to our plan administrators. She spends her days processing plan contributions, taking phone calls, and making sure all forms of communication are properly distributed; quite a high-tech process in a paperless office! She has experience in managing small businesses and adores her husband and 4 children.





## Retirement Plans in a Failed Economy

With the economy in a free fall the likes of which many have not seen in their lifetime, many employers are scrambling to salvage their bottom line. It is only likely then that one area employers may look to reduce costs is employee benefits. While many retirement plans do offer the employer flexibility with regards to the annual cash outlay required for funding such benefits, some do not. It is important that employers arm themselves with the knowledge necessary for making informed decisions when cutting benefits to avoid any potential fees, penalties or possible Plan disqualification. The following is a brief overview of questions and answers regarding the rules and regulations surrounding some of the issues which may be encountered when deciding to reduce retirement plan contributions and benefits.

### **Employer Matching Contributions**

**Q:** If a plan allows for discretionary matching contributions, can the employer stop or reduce matching contributions and if so what is required?

**A:** Yes. If a plan allows for discretionary matching contributions, an employer may stop or reduce the match at any time. A notice to employees is generally not required but recommended as a courtesy to allow employees the opportunity to change their deferral elections. It is recommended that the employer document the change in match formula via a board resolution.

**Q:** If a plan has a fixed matching contribution (i.e. the matching formula is specifically written into the document) can the employer stop or reduce matching contributions and if so what is required?

**A:** Yes. If a plan has a fixed matching contribution an employer can stop or reduce the match prospectively. If any employee has already met the allocation requirements to accrue a match for the year, the portion of the match that has already been accrued must be contributed up to that point. Then the match can be suspended or reduced going forward. This type of change will require both a board resolution and a plan amendment. A notice to employees is generally not required but recommended as a courtesy to allow employees the opportunity to modify their deferral elections. In addition, the participants need to be furnished a copy of the revised Summary Plan Description which details the changes in match formula.

### **Safe Harbor Contributions**

**Q:** If an employer utilizes a safe harbor matching contribution formula, can the employer stop matching contributions for the year and if so what is required?

**A:** Yes. If an employer has elected to provide the safe harbor matching contributions for the year the employer may stop during the plan year. To do so, the employer must amend the plan document, provide the employees with a 30 day advanced notice, and allow employees ample opportunity to modify their salary deferral elections. The employer also must contribute the year-to-date matching contribution from the beginning of the plan year through the date that ends the thirty day notice period.

Example, if an employer decided they could no longer afford the safe harbor match on March 1<sup>st</sup>; they would amend the plan and issue a notice to employees that may be delivered on March 15<sup>th</sup>. The employer notice would indicate that the matching contributions will be stopped effective April 15<sup>th</sup>. The employer would contribute the matching contributions earned from the beginning of the plan year up to and including April 15<sup>th</sup>. Note that in computing the matching contributions the annual compensation limit must be prorated for the period of the year the match was in effect.

### **Retirement Plans in a Failed Economy continued...**

*Also note, if an employer ceases the safe harbor match at any time during the plan year the required ADP and ACP non-discrimination testing will be required for the plan year and the employer will then lose any protection it would have otherwise earned for the year through the use of the safe harbor contributions. In addition, if the plan is top heavy, ceasing the safe harbor match will also subject the plan to the top heavy minimums which would have otherwise been avoided under the safe harbor since safe harbor plans are exempt from top heavy minimums.*

**Q:** *If an employer utilizes a safe harbor nonelective contribution formula, can the employer stop or suspend the contribution for the year?*

**A:** *Yes but only if the employer suffers a substantial business hardship. According to a proposed regulation issued by the IRS on May 18, 2009, an employer may suspend the safe harbor nonelective contributions for a plan year. To do so, the employer must amend the plan document, provide the employees with a 30 day advanced notice and allow employees ample opportunity to modify their salary deferral elections. The employer must also contribute the year-to-date safe harbor contribution from the beginning of the plan year through the date that ends the thirty day notice period. Note that in computing the safe harbor contributions the annual compensation limit must be prorated for the period of the year the safe harbor was in effect.*

*Also note, if an employer ceases the safe harbor nonelective contribution at any time during the plan year the required ADP and ACP (if applicable) non-discrimination testing will be required for the plan year and the employer will then lose any protection it would have otherwise earned for the year through the use of the safe harbor contributions. In addition, if the plan is top heavy, ceasing the safe harbor nonelective contributions will also subject the plan to the top heavy minimums which would have otherwise been avoided under the safe harbor since safe harbor plans are exempt from top heavy minimums. In some cases, the top heavy minimums could result in a larger contribution than the safe harbor nonelective contributions.*

*One way to gain better flexibility with safe harbor contributions in future years is through the use of the safe harbor "maybe" option. Under such provision, an annual notice to employees informs them that the employer "may" contribute the safe harbor nonelective contribution for the year. The employer then must decide within thirty days before the end of the plan year whether or not they will actually make the contribution.*

*In summary, many plans offer ways for employers to reduce the current level of contributions if the need arises. However it must be stressed that the level of complexity and regulations imposed on retirement plans demands careful consideration to a whole host of factors in determining all impacts of a reduction in plan contributions. For this reason, it is imperative that you contact your MVP plan representative to discuss any potential changes to your plan you may be considering. We are here to help you navigate your way through the process to find a benefit structure that is meeting your objectives and expenditure goals.*

### **MVP's MVPs - and how to reach them.**

Do you know who your MVP Plan Administrator is? We hope so! You can always call our toll free phone number 1-866-687-6877 and anyone can help you, but here is the list of our staff:

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